

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Sergio Guerra	Team: Squad #4	CCRB Case #: 201503991	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 05/12/2015 11:30 PM	Location of Incident: § 87(2)(b)	Precinct: 75	18 Mo. SOL 11/12/2016	EO SOL 11/12/2016	
Date/Time CV Reported Wed, 05/13/2015 12:19 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 05/19/2015 12:47 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Noel Damico	12566	951650	075 PCT
2. SGT Melissa Clark	01621	932472	075 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Matthew Demaio	23579	952663	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Noel Damico	Force: PO Noel Damico used physical force against § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		

Case Summary

On May 12, 2015, at approximately 11:30 p.m., § 87(2)(b) was drinking alcohol and watching a basketball game on television inside of § 87(2)(b), in Brooklyn, NY, when he heard fighting outside involving his friend, § 87(2)(b) and § 87(2)(b). When § 87(2)(b) went outside to see what was going on, § 87(2)(b) had been arrested and was led to an unmarked police vehicle by PO Matthew Demaio. § 87(2)(b) asked an officer standing in front of § 87(2)(b) why § 87(2)(b) was being arrested, but was ignored. § 87(2)(b) then walked over to PO Demaio, who was placing § 87(2)(b) into the vehicle. As § 87(2)(b) was approaching, an officer instructed him to “stay over there,” pushing § 87(2)(b) away from PO Demaio. The same officer then pushed § 87(2)(b) into PO Noel Damico. PO Damico grabbed § 87(2)(b) and threw him to the ground (**Allegation A**). § 87(2)(b) suffered multiple facial abrasions as a result. PO Damico then handcuffed § 87(2)(b) with the help of another officer. § 87(2)(b) was transported to the 75th Precinct stationhouse, followed by § 87(2)(b), where § 87(2)(b) was treated for his injuries. § 87(2)(b) was charged with § 87(2)(b). Video footage of the incident showed the FADO allegations (Board Review 1).

Mediation, Civil and Criminal Histories

Due to § 87(2)(b)'s arrest, this case was not eligible for mediation. § 87(2)(b) also filed a Personal Injury Claim Form with the City of New York, but as of August 27, 2015, no 50H hearings have taken place (Board Review 2). § 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

This is the third CCRB complaint involving § 87(2)(b) § 87(2)(b)

PO Noel Damico has been a member of the NYPD for 3 years. He has had 1 previous CCRB case with 2 allegations, § 87(2)(g).

SGT Melissa Clark has been a member of the NYPD for 12 years. She has had 4 previous CCRB cases with 8 allegations, including the substantiation of a frisk and a question and/or stop with no disciplinary action taken.

Potential Issues

On May 13, 2015, § 87(2)(b) called IAB to file the complaint in question. However, § 87(2)(b) failed to appear for both of her scheduled in-person interviews and did not call to cancel.

In regards to § 87(2)(b) contact could not be established with him via his home number, as well as various numbers obtained from additional databases. Please call letters were also sent to both of § 87(2)(b)'s addresses. However, § 87(2)(b) failed to respond and did not contact the CCRB.

§ 87(2)(b)

Findings and Recommendations

Explanation of Subject Officer Identification

Although § 87(2)(b) could only provide a general description of the officers on the scene, based on the officer statements provided and the video footage obtained, it was determined that PO Noel Damico was the officer who threw § 87(2)(b) to the ground.

To begin, PO Damico stated that he was standing on the sidewalk directly parallel to the police vehicle § 87(2)(b) was placed into. As shown in the video, there was only one officer standing at that location. PO Damico then stated that he walked over to PO Demaio and pushed § 87(2)(b) causing § 87(2)(b) to trip and fall onto the ground, landing on his stomach. As shown in the video, the officer standing on the sidewalk walked over to PO Demaio and threw § 87(2)(b) to the ground. PO Damico also shared the same body type and bald spot as that officer. Although when shown footage of the incident PO Damico could not differentiate himself from the first or second officer to make physical contact with § 87(2)(b) PO Damico identified himself as the officer who handcuffed § 87(2)(b)'s left hand. As shown in the video, that officer was the same officer who threw § 87(2)(b) to the ground (Board Review 1, 7, and 8).

Moreover, PO Matthew Demaio and Sgt. Melissa Clark stated that PO Damico pushed § 87(2)(b) causing him to fall to the ground. Sgt. Clark also identified PO Damico in the video as the officer who threw § 87(2)(b) to the ground, recognizing his body type and bald spot (Board Review 9 and 10).

§ 87(2)(g)

Allegations not Pleaded

§ 87(2)(g)

Recommendation

Allegation A: Force- PO Noel Damico used physical force against § 87(2)(b)

It is undisputed that PO Noel Damico used physical force against § 87(2)(b)

The video footage obtained corroborated § 87(2)(b)'s testimony pertaining to the sequence of events that led to PO Noel Damico using physical force against him (Board Review 1 and 11).

- 51 seconds: § 87(2)(b) approached the unmarked police vehicle as PO Matthew Demaio placed § 87(2)(b) inside.
- 53 seconds: As an unidentified officer followed behind § 87(2)(b) someone could be heard stating, "Stay over there man" and "Where are you going?"
- 56 seconds: An unidentified officer pushed § 87(2)(b) against a vehicle and someone could be heard stating, "Stay over there." PO Damico walked up behind § 87(2)(b)
- 57 seconds: The unidentified officer pushed § 87(2)(b) into PO Damico.

- 58 seconds: PO Damico grabbed § 87(2)(b) under the right armpit and left shoulder, twisted, and threw § 87(2)(b) to the ground. § 87(2)(b) landed on his right side and his momentum carried him over onto his front side, face down, remaining on the ground until 1 minute and 7 seconds.

During PO Noel Damico's in-person statement, he stated that as § 87(2)(b) was being placed into the police vehicle, § 87(2)(b) approached violently, "threatening with words" and "screaming." PO Damico asked § 87(2)(b) multiple times to step back, but § 87(2)(b) responded, "I can stand wherever the fuck I want, fuck you" and took a "violent step" toward him. By that point, PO Damico stated that § 87(2)(b) was inside of his "comfort zone" and PO Damico "made him step back," pushing the front side of § 87(2)(b)'s body with one hand, causing him to "trip," fall, and land on his stomach. He did so because § 87(2)(b) was not complying with orders and "was under arrest." PO Damico noted that § 87(2)(b) was intoxicated and smelled of alcohol. When PO Damico was shown video footage of the incident, he stated, "I don't remember pushing him to the ground." (Board Review 8)

Both PO Matthew Demaio and Sgt. Melissa Clark stated that § 87(2)(b) was ordered back but did not comply. They characterized § 87(2)(b)'s demeanor as aggressive, with PO Demaio stating that § 87(2)(b) was yelling, squaring his shoulders, and taking big steps. PO Demaio reported feeling threatened and feared that § 87(2)(b) would interfere with the arrest. As per PO Demaio, while at the stationhouse, § 87(2)(b) was swaying, his eyes were bloodshot, and he smelled of alcohol (Board Review 9 and 10).

NYPD Patrol Guide Procedure 203-11 regarding the "Use of Force" specifically states that "only that amount of force necessary to overcome resistance will be used to effect an arrest." (Board Review 19) § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(4-b), § 87(2)(g) [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

Squad: _____

Investigator:	_____	_____	_____
	Signature	Print	Date
Supervisor:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date